

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

NOVA SERVICES INC.,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.
)	1:20-cv-02773-RDB
RECLEIM NOVA, LLC, et al.,)	
)	
)	
Defendants.)	

**PLAINTIFF NOVA SERVICES, INC.’S ANSWER TO
DEFENDANTS RECLEIM NOVA, LLC AND RECLEIM, LLC’S COUNTERCLAIM**

Plaintiff and Counter Defendant, Nova Services Inc., by its undersigned counsel, answers the Counterclaim filed by Defendants and Counter Plaintiffs Recleim Nova, LLC, and Recleim, LLC.

With reference to the Defendants and Counter Plaintiffs’ footnote 1, a citation to which is contained in the introductory paragraph, Plaintiff and Counter Defendant denies that the May 5, 2017, Asset Purchase Agreement (“APA”) between Nova Services Inc. (“Nova Services”) and Recleim Nova, LLC (“Recleim Nova”) and Recleim, LLC (“Recleim”) mandates that legal suits, actions or proceedings relating to the APA be brought in federal and state courts in Delaware.¹ Plaintiff and Counter Defendant admits that on October 30, 2020, Recleim Nova and Recleim moved to transfer venue to the United States District Court for the District of Delaware.

¹ The APA provides that “Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby **may** be instituted in the federal courts of the United States of America or the courts of the State of Delaware in each case located in the city of Wilmington and county of New Castle, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.” (APA § 8.11) (emphasis added).

ADMISSIONS AND DENIALS

1. Plaintiff and Counter Defendant Nova Services denies the allegation contained in the first sentence of Paragraph 1 of the Counterclaim. Plaintiff and Counter Defendant admits that the document attached as Exhibit A to the Counterclaim is a true copy of the Asset Purchase Agreement dated May 5, 2017 (“APA”).

PARTIES

2. Plaintiff and Counter Defendant Nova Services admits the allegation contained in Paragraph 2 of the Counterclaim.

3. Plaintiff and Counter Defendant states it lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 3 of the Counterclaim.

4. Plaintiff and Counter Defendant states it lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 3 of the Counterclaim.

JURISDICTION

5. Plaintiff and Counter Defendant Nova Services admits the allegation contained in Paragraph 5 of the Counterclaim.

6. The allegation contained in Paragraph 6 of the Counterclaim sets forth the legal statute upon which Defendants and Counter Plaintiffs rely for their contention that this Court has supplemental jurisdiction, and for which allegation no response is required.

7. Plaintiff and Counter Defendant Nova Services admits the allegation contained in the first sentence of Paragraph 7 of the Counterclaim that Nova Services is subject to the

jurisdiction of this Court. Plaintiff and Counter Defendant denies the remaining allegations contained in that paragraph.

8. Plaintiff and Counter Defendant denies the allegation contained in Paragraph 8 of the Counterclaim and states that the APA does not mandate that legal suits, actions or proceedings relating to the APA be brought in federal and state courts in Delaware.

FACTS AND ALLEGATIONS

9. Plaintiff and Counter Defendant admits the allegations contained in Paragraph 9 of the Counterclaim.

10. Plaintiff and Counter Defendant admits the allegations contained in Paragraph 10 of the Counterclaim.

11. Plaintiff and Counter Defendant admits the allegations contained in Paragraph 11 of the Counterclaim.

12. Plaintiff and Counter Defendant admits in part and denies in part the allegations contained in Paragraph 12 of the Counterclaim. Plaintiff and Counter Defendant admits that prior to, at the time of, and for a period of time after its execution of the APA, Nova Services represented that it was capable of performing, intended to perform, and did perform all of its obligations under the APA. Further answering the allegation, Nova Services states that after the Counter Plaintiffs failed to cure their material breach of the APA, Nova Services was excused from performing its obligations under the APA.

13. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 13 of the Counterclaim.

14. Plaintiff and Counter Defendant denies the allegation contained in Paragraph 14 of the Counterclaim. Further answering the allegation in that paragraph, Plaintiff and Counter

Defendant states that Defendants and Counter Plaintiffs assumed the responsibility for retitling Purchased Assets and failed to properly fulfill that responsibility.

15. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 15 of the Counterclaim.

16. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 16 of the Counterclaim.

17. Plaintiff and Counter Defendant admits the allegation contained in Paragraph 17 of the Counterclaim.

18. Plaintiff and Counter Defendant admits the allegations contained in Paragraph 18 of the Counterclaim.

19. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 19 of the Counterclaim.

20. Plaintiff and Counter Defendant Nova Services admits in part and denies in part the allegations contained in Paragraph 20 of the Counterclaim. Plaintiff and Counter Defendant admits that it brought the instant lawsuit against the Counter Plaintiffs in the Circuit Court for Baltimore County, Maryland. Plaintiff and Counter Defendant denies that its lawsuit is “in contravention of its commitment under” the January 3, 2019 Agreement and Release and it denies that it “is asserting claims that it waived through the January 3, 2019 Agreement and Release.”

COUNT I
BREACH OF CONTRACT [ASSET PURCHASE AGREEMENT]
(By Recleim Nova, LLC and Recleim, LLC)

21. Plaintiff and Counter Defendant Nova Services incorporates by reference Paragraphs 1 through 20 of this Answer as if fully set forth herein.

22. Plaintiff and Counter Defendant admits the allegations contained in Paragraph 22 of the Counterclaim.

23. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 23 of the Counterclaim.

24. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 24 of the Counterclaim.

25. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 25 of the Counterclaim.

26. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 26 of the Counterclaim.

COUNT II
BREACH OF CONTRACT [JANUARY 3, 2019 RELEASE AND AGREEMENT]
(By Recleim Nova, LLC and Recleim, LLC)

27. Plaintiff and Counter Defendant Nova Services incorporates by reference Paragraphs 1 through 26 of this Answer as if fully set forth herein.

28. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 28 of the Counterclaim.

29. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 29 of the Counterclaim.

30. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 30 of the Counterclaim.

31. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 31 of the Counterclaim.

32. Plaintiff and Counter Defendant denies the allegations contained in Paragraph 32 of the Counterclaim.

GENERAL DENIAL

All allegations not specifically admitted are denied. Plaintiff and Counter Defendant Nova Services denies that Defendants and Counter Plaintiffs are entitled to any relief, either at law or in equity.

AFFIRMATIVE AND OTHER DEFENSES

In asserting the defenses that follow, Plaintiff and Counter Defendant Nova Services does not assume the burden of proof as to matters that, pursuant to law, are Defendant and Counter Plaintiffs' burden to prove. In addition, Plaintiff and Counter Defendant is continuing to investigate Counter Plaintiffs' allegations; therefore, Plaintiff and Counter Defendant reserves the right to amend its Answer and Defenses.

FIRST DEFENSE

The Counterclaim fails to state a claim or a basis of liability against Plaintiff and Counter Defendant Nova Services.

SECOND DEFENSE

Plaintiff and Counter Defendant Nova Services did not breach the contracts as alleged by Defendants and Counter Plaintiffs.

THIRD DEFENSE

Defendants and Counter Plaintiffs Recleim Nova and Recleim materially breached the Asset Purchase Agreement in numerous respects and made false representations in the Asset Purchase Agreement. Therefore, any conduct on the part of Nova Services that may be determined to be contrary to the strict letter of the Asset Purchase Agreement is excused.

FOURTH DEFENSE

Defendants and Counter Plaintiffs' breach of contract claims against Nova Services fail because any alleged nonperformance or breach of contracts was incidental to the objects of the contracts and/or not material.

FIFTH DEFENSE

To the extent that the Court determines that Defendants and Counter Plaintiffs are entitled to any recovery, which Nova Services denies, Plaintiff and Counter Defendant is entitled to set-off its damages and losses.

SIXTH DEFENSE

Defendants and Counter Plaintiffs' counterclaims are time-barred, in whole or in part, by applicable statutes of limitations.

SEVENTH DEFENSE

Defendants and Counter Plaintiffs' claims for injunctive relief are barred by the doctrine of laches.

EIGHTH DEFENSE

Defendants and Counter Plaintiffs' claims for injunctive relief are barred by their unclean hands.

NINTH DEFENSE

Defendants and Counter Plaintiffs' counterclaims are barred by the defense of estoppel.

TENTH DEFENSE

Defendants and Counter Plaintiffs' counterclaims are barred by the defense of waiver.

ELEVENTH DEFENSE

Defendants and Counter Plaintiffs' claim that Nova Services breached the Asset Purchase Agreement is barred because Recleim Nova and Recleim made it impossible for Nova Services to perform all of the terms of that agreement.

TWELFTH DEFENSE

Defendants and Counter Plaintiffs' claim that Nova Services breached the January 3, 2019 Agreement And Release fails due to a lack of good and valuable consideration.

RESERVATION

Plaintiff and Counter Defendant reserves the right to raise other defenses that may subsequently become known to it in the course of discovery.

WHEREFORE, the Plaintiff and Counter Defendant, Nova Services Inc., prays: (1) that Counter Plaintiffs take nothing on their Counterclaim; (2) that the same be dismissed with prejudice; and (3) for such other and further relief as the Court deems just.

Dated: December 22, 2020

Respectfully submitted,

/s/ Michael Paul Smith
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Counter Defendant,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of December, 2020, the foregoing Plaintiff and Counter Defendant's Answer to Counterclaim was filed electronically with the Court using the CM/ECF system, which system will then send electronic notification of the filing to all counsel of record.

/s/ Stephen J. Nolan
Stephen J. Nolan (Bar No. 578)